

November 20, 2020

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS AND OTHER  
INTERESTED PARTIES

## TITLE 2. STATE ALLOCATION BOARD

### NOTICE OF PROPOSED EMERGENCY REGULATORY ACTION

In accordance with Assembly Bill 1302, Chapter 713, Statutes of 2006, enclosed are proposed emergency regulations adopted by the State Allocation Board (SAB) at its meeting on September 30, 2020. The proposed emergency regulatory amendments are attached to this Notice and can be accessed on the Office of Public School Construction's (OPSC) website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>.

### INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The SAB, at its meeting on September 30, 2020, adopted proposed regulatory amendments on an emergency basis relating to the use of site sale property proceeds. Senate Bill (SB) 98, Chapter 24, Statutes of 2020 [Education finance: omnibus budget trailer bill] was chaptered June 29, 2020 and provided school districts with the resources and flexibilities necessary to provide quality education during the COVID-19 pandemic. SB 820, Chapter 110, Statutes of 2020, [Education Finance: Education Omnibus Budget Trailer Bill] was chaptered September 18, 2020 and amended SB 98 by adding clarifying changes and flexibility to the School Facility Program (SFP).

Existing law authorizes school district governing boards to sell, or lease for a term not exceeding 99 years, any real property belonging to the school district. Existing law also specifies the conduct of these sales and leases and the purposes for which the funds derived from these transactions can be used.

Previously, Education Code Section 17463.7 existed in law from July 28, 2009 until January 1, 2016 when it was repealed. The law authorized the use of surplus real estate sale proceeds for one-time general fund purposes as long as the costs were not related to a school district's ongoing operations. School districts were required to present a plan to its local governing board regarding the use of one-time expenditures and explain why these expenditures would not result in ongoing fiscal obligations for the school district. School districts were ineligible for hardship funding under the State School Deferred Maintenance Program for a period of five years after the proceeds were deposited into the general fund. In addition, a school district's SFP facility and financial hardship assistance was reduced by an amount equal to that of the school district's one-time expenditure(s). School districts were required to certify the following:

- That it had no major deferred maintenance needs;
- That the site sale did not violate local bond restrictions; and
- That the real property was not suitable to meet projected school construction needs for the next ten years.

Education Code Section 17462 currently authorizes school districts to deposit the proceeds from the sale or lease of surplus real property, together with any personal property located on the property, into the general fund of the school district and to use the proceeds for any one-time general fund purpose. The regulations for this Program already exist. The table below is a side-by-side comparison governing the use of surplus site sale proceeds deposited into a school district's governing fund based on the two Education Code sections:

	<b>EC Section 17462</b>	<b>EC Section 17463.7</b>
<b>Source of Site Funding</b>	Site can be purchased with state and/or local funds.	Site must have been purchased with nonstate funds.
<b>School Facility Program Funding</b>	<ul style="list-style-type: none"> <li>• Prohibited from participating in the SFP for five years.</li> <li>• Unable to apply for Facility Hardship and Financial Hardship funding.</li> </ul>	<ul style="list-style-type: none"> <li>• Not prohibited from participating in the SFP.</li> <li>• Unable to apply for Financial Hardship grant funding.</li> </ul>
<b>Use of Funding</b>	One-time Expenditures	One-time Expenditures
<b>School Board Resolution Requirements</b>	<ul style="list-style-type: none"> <li>• No anticipated need for additional sites or construction for 10 years.</li> <li>• No major deferred maintenance requirements.</li> <li>• The sale does not violate local bond act provisions.</li> </ul>	<ul style="list-style-type: none"> <li>• The site is not suitable to meet projected school construction needs for 10 years.</li> <li>• The sale does not violate local bond act provisions.</li> </ul>

As noted in the introductory paragraph above, the Finding of Emergency and proposed regulations are attached to this Notice. You may review the Finding of Emergency and proposed regulations on OPSC's website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>. Copies of the proposed regulations and Finding of Emergency will be mailed to any person requesting this information by using the OPSC contact information set forth below. The proposed regulations implement the provisions of SB 98, as amended by SB 820, by adding Section 17463.7 to the Education Code until July 1, 2024 to expand the purposes for which funds from these transactions may be used.

OPSC, on behalf of the SAB, intends to submit the emergency regulations to the Office of Administrative Law (OAL) in early December 2020. The following is an overview of the proposed regulations.

#### *Summary of the Proposed Regulations*

A summary of the proposed regulatory amendments is as follows:

Existing Regulation Section 1700 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments add Education Code Section 17463.7 to the introduction of the definitions section because these definitions also apply to Section 17463.7. In addition, this same section has been added to the authority and reference citations.

There were no changes to existing Regulation Sections 1701 and 1702.

## SUBMISSION OF COMMENTS

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the OAL, the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed regulations to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed regulations as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OAL within five days after the SAB submits the regulations to the OAL for review.

Please reference submitted comments as regarding "Use of Surplus School Property Proceeds," addressed to:

Reference Attorney

Mailing Address: Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

E-mail Address: [staff@oal.ca.gov](mailto:staff@oal.ca.gov)

Fax No.: (916) 323-6826

For the status of the SAB submittal to the OAL for review, and the end of the five-day written submittal period, please consult the website of 1) the OAL at [www.oal.ca.gov](http://www.oal.ca.gov) under the heading "Emergency Regulations," and 2) OPSC at <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>, then scroll down to the proposed regulations and Finding of Emergency bullets under the Surplus School Property and Use of Proceeds header.

Pursuant to Title I, Section 55, please send a copy of written comments regarding the proposed regulatory action, as well as requests for a copy of the proposed regulatory action, and questions concerning the substance of the proposed regulatory action, addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction  
707 Third Street, 6<sup>th</sup> Floor  
West Sacramento, CA 95605

E-mail Address: [lisa.jones@dgs.ca.gov](mailto:lisa.jones@dgs.ca.gov)

Fax No.: (916) 375-6721

### AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Emergency Regulatory Action may be directed to Ms. Lisa Jones at (916) 376-1753. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (916) 376-1646.